

INFORMATION PAPER

SUBJECT: Contacts by Former Senior Officers and Employees Seeking Information or Other Assistance

1. PURPOSE. To provide guidance on requests for release of information and other assistance from former senior officers and employees.

2. FACTS.

a. If a former senior officer/employee contacts you for information or other assistance, you need to ask two questions:

(1) Does this contact violate any of the post-Government employment restrictions?

(2) Is it appropriate to provide the information or other assistance as requested?

b. You should consider whether the requester should be making the contact at all. There are criminal restrictions on certain types of contacts by former Government personnel. The most relevant are as follows:

(1) For one year after leaving Government service, all former General Officers and other former senior officials are prohibited from making any contact with or appearance before any official of the government agency in which they served to attempt to influence any official action on behalf of someone else.

(2) Former officers and employees, regardless of rank, are permanently prohibited from "switching sides" and representing someone else to attempt to influence official Government action concerning a matter in which they participated personally and substantially as a Government officer or employee. (Note the prohibition lasts for only two years if they did not participate in this particular matter, but they were supervising the action, i.e., it was under their official responsibility.)

c. Not all contacts with Army officials will be criminal, even those during the first year after leaving Army service. For the contact to be improper, representation of someone (e.g., contractor, consultant, labor union, professional association, or some other private organization) is required, along with an attempt to influence an official Army action.

d. While a former officer or employee could seek information, even information that relates to a particular matter with which he/she was involved as an Army officer or employee, without violating the law, you may want to discourage such contacts to avoid

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the appearance of impropriety. Contacts like these, especially those by former senior officers and employees during their first year after leaving the Government, could result in embarrassment, criminal investigations, contract protests, debarment actions, and litigation.

e. Some legal contacts are purely social activities, dealings to help conclude an official matter that may have been left hanging upon departure, or an overture to suggest that the former senior employee, in his or her personal capacity, be put on contract (here, the former employee is representing him or herself, not someone else).

f. One value of former Army officials to their new employers is their knowledge of the Army - its systems and processes, its personnel, and how to obtain and interpret information. However, former Government officials are required to protect and not exploit classified, proprietary, contractor bid or proposal, and other "inside information" (i.e., information obtained as part of his Government position which the Army would not release to the public under the Freedom of Information Act (FOIA)).

g. One of the capabilities that former Army officials may not market to their new employers is access! As a practical matter, former officials have access to military installations and organizations. Retired General Officers retain official access to current officials and information so that they are prepared to work with and assist the Army in the event of an emergency. Notwithstanding such legitimate access, former Army officials may not use, exploit, or market this access to their civilian employer. It is improper for them to use their former positions to gain access to current Army officials and information that would not otherwise have been available to the public. While they may not be subject to personal sanction, unless they violate a criminal law, Army officials from whom they receive preferential treatment may be disciplined. Additionally, litigation can result in the unnecessary delay of agency action. Giving preferential treatment by providing information to former officials may result from:

(1) Use of public office for private gain of friends or others with whom the employee is affiliated, or inducing others such as subordinates to provide some benefit to persons with whom the official is affiliated in a private capacity.

(2) Use of nonpublic information to further someone else's private interest, whether through advice or recommendation, or by knowing unauthorized disclosure.

(3) Unauthorized release of information protected by the Procurement Integrity Law.

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h. When a former officer or employee wishes to meet with you or asks you for information, it is your responsibility to ensure that honoring the request will not violate law or regulation. You should ensure that those who work for you understand that they are expected to question the validity of responding to the request if they have any doubt. They should be encouraged to seek the advice of their supervisor, commander, and ethics counselor.

i. In summary, providing information or assistance is appropriate if, at the time of the request, you would readily release this information to any other member of the public or there is some other official Army reason that the former official is entitled to the information. It is not appropriate to do so if the only reason is that the requester is a former colleague or senior official (the operative term here is “former”). Even if it is appropriate to release the information, it is not appropriate to provide an analysis, create additional information, or do projections if you would not do the same for others.

3. If you receive a request for official information or other action from a former Army official, you should contact the Military Law and Ethics Division (624-7414) if you have any doubt as to the appropriateness of the request or how you should respond.

Chief, Military Law and Ethics Division